

Serial No. 10/015,559

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Accordingly, applicants have amended Claim 9 and have added new Claim 12 to better bring out that the carrier, which is now designated as (1) and the additional ingredient which is now designated as (3) of the claimed composition are cannot both be ethanol at the same time. No new matter has been added.

Applicants' clarification of Claim 9 obviates the Examiner's argument that Claims 9 and 11 were anticipated under 35 U.S.C. §102(b) by, or were prima facie obvious under 35 U.S.C. §103(a) in light of, the ethanol solution referenced in Example 27 of the teaching of Eziri et al. (US 4,728,650). Withdrawal of the respective rejection(s) is therefore respectfully solicited.

The Examiner also rejected Claims 3 to 9 and 11 under 35 U.S.C. §103(a) as being unpatentable in light of the teaching of Deckner et al. (EP 0238 302) when taken in view of the disclosure of Wechter et al. (US 6,048,891 and US 6,555,575). The Examiner argued in this context that the disclosure of Wechter et al. taught carboxylic derivatives of tocopherol to be similarly useful as therapeutic agents, and particularly as antioxidants or free radical inhibitors, and points out that the disclosure of Wechter et al. conveyed that the linker between the carboxylic group and the chroman does not significantly affect the biological activity of the compounds.

Applicants herewith enclose a Declaration which is executed by Dr. Haremza and which sets forth the results of investigations into the antioxidant properties of α -CEHC acetate, 2,5,7,8-tetramethyl-2-carboxyl-6-chromanol, 2,2,5,7,8-tetramethyl-6-chromanol, vitamin E (α -tocopherol) and CEHC. As explained by Dr. Haremza in the Declaration, the test is set up in such a manner that the consumption of oxygen in the presence of the investigated compound correlates to the antioxidant properties of the compound. More particularly, no consumption of oxygen under the conditions of the tests indicates a high effectiveness whereas the consumption of oxygen indicates low or insufficient antioxidant properties of the compound. The data which are compiles in the graph on page 2 of Dr. Haremza's Declaration are an impressive illustration of the fact that only the compound referenced in applicants' claims achieve an antioxidant level where no oxygen is consumed under the test conditions. All other tested tocopherol derivatives as well as tocopherol are distinctly less effective as antioxidants and are unsuitable to prevent an oxidative damage to the test matrix squalene.

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The tests and results set forth in Dr. Haremza's Declaration are deemed to be clear evidence of unexpected properties especially in light of the Examiner's interpretation of the teaching of *Wechter et al.* that no significant differences of the biological activity of the compounds could be expected. As such, the tests and results are deemed to fully rebut the Examiner's rejection of applicants' claims under the provisions of Section 103. Favorable reconsideration of the Examiner's position and withdrawal of the respective rejection is, therefore, respectfully solicited.

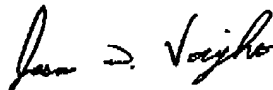
In light of the foregoing and the attached the application should now be in condition for allowance. Early action by the Examiner would be greatly appreciated by applicants.

REQUEST FOR EXTENSION OF TIME:

It is respectfully requested that a two month extension of time be granted in this case. The respective \$450.00 fee is paid by credit card (Form PTO-2038 enclosed).

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account No. 14.1437. Please credit any excess fees to such deposit account.

Respectfully submitted,
NOVAK DRUCE DELUCA & QUIGG, LLP



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Encl.: CLAIM AMENDMENTS (Appendix I)

Dr. Haremza's Declaration dated December 23, 2005

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